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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the Inter-Parliamentary Union,*
a non-governmental organization with consultative status
(Category I)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 January 1991]

1. The defence of parliamentarians' rights is one of the priorities of the Inter-Parliamentary Union. Indeed, it considers that it is "the necessary prerequisite to enable them to protect and promote human rights and fundamental freedoms in their respective countries, and that, in addition, the representative nature of a Parliament closely depends on the respect of the rights of the members of that Parliament".

2. Thus, since 1 January 1977, it deals with concrete situations thanks to a procedure for the examination and treatment of communications concerning violations of the human rights of parliamentarians.

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*/ One hundred and thirteen national Parliaments are currently represented within the Inter-Parliamentary Union, which also has two Associate Members.

3. Persons seeking detailed information concerning the characteristics and functioning of this procedure may refer to document E/CN.4/1989/NGO/10 presented at the forty-fifth session of the United Nations Commission on Human Rights in 1989, and to the article by the Secretary-General of the Inter-Parliamentary Union which appeared in the 89/1 issue of the Human Rights Bulletin published by the United Nations Centre for Human Rights.

4. For reference, it may merely be recalled that a Committee on the Human Rights of Parliamentarians, made up of five parliamentarians, investigates complaints confidentially on the basis of stringent juridical criteria. This Committee meets in camera four times a year and presents to the Inter-Parliamentary Council, on the occasion of that body's two annual sessions, a public report accompanied by recommendations for action on all cases for which it has not been possible to reach a satisfactory settlement within a reasonable period of time in the context of the confidential procedure. The cases brought to the attention of the Inter-Parliamentary Council are the subject of resolutions to the application of which the member Parliaments of the Union contribute. A file is only closed when the Committee or, in the case of a situation examined publicly, the Inter-Parliamentary Council considers that the case has been settled satisfactorily or that it does not warrant any further action by the Union.

5. For information, it may be noted that only complaints from certain sources (among other criteria) are considered and that the Committee is competent with regard to national parliamentarians whose rights have been affected, either as parliamentarians or as individuals. The Committee will meet again from 4 to 7 March, then from 27 April to 2 May 1991.

6. In 1990, the Committee brought to the attention of the Inter-Parliamentary Council 23 cases in 6 countries; the Council took decisions on these cases and it was possible to close some files during the year. The following only covers situations which have given rise to a public procedure, it being understood that other cases have been or are being examined confidentially.

(a) Two cases in Chile

7. These concern two members of the Chilean Congress, dissolved in 1973, */ Mr. Carlos Lorca Tobar and Mr. Vicente Atencio Cortés, who disappeared in 1975 and 1976 respectively, following their arrest in the presence of witnesses, by plainclothes police officials.

8. On 30 March 1990, the remains of Vicente Atencio Cortés, bearing marks of torture, were dug up (along with those of two other detainees who had disappeared) at a secret collective grave located on the property of "Las Tortolas in Colina", which had belonged to the army up until 1980. The Chamber of Deputies paid tribute to the memory of Deputy Atencio Cortés, whose remains were recovered by the family and buried, at the same time as those of other "disappeared persons", at an official funeral. The Inter-Parliamentary Council has confirmed its opinion that Deputy Atencio Cortés had been the

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*/ Chile once again has a National Congress, which resumed its place within the Inter-Parliamentary Union in October 1990.

victim of political repression under the régime of General Pinochet, and it has considered that the official tribute paid to his memory tends to show, without prejudice to the ruling to be reached by the competent court, that that was already accepted as an established fact by the Chilean State. It has keenly hoped that the inquiries being carried out would make it possible to identify those responsible for the arrest of Deputy Atencio Cortés, his detention, the ill-treatment he suffered and his death, and has noted that a penal complaint had been lodged with the 19th Criminal Chamber of Santiago.

9. The Council has recalled that article 9 (5) of the International Covenant on Civil and Political Rights stipulates that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation", and considered that, quite apart from the criminal proceedings, the State of Chile was bound to grant compensation to the relatives of Deputy Atencio Cortés. It has also hoped that, beyond such moral reparation as might be decided, the Committee on Human Rights, Citizenship and Nationality of the Chilean Chamber of Deputies would be able to facilitate the rapid granting to the family of Deputy Atencio Cortés of the material compensation to which it was entitled. The file was closed.

10. With regard to Deputy Carlos Lorca Tobar, the Council has noted that, despite existing testimonies concerning his arrest, his detention in secret locations under the authority of DINA (in particular Villa Grimaldi and Colonia Dignidad) and the ill-treatment inflicted on him, and despite the testimonies of persons directly involved in these violations of human rights (one of whom was assassinated), the fate that befell him has not been fully established.

11. In respect of the criminal action brought on the subject of the illegal detention and forced disappearance of Carlos Lorca Tobar and 69 other persons, the Supreme Court of Chile ruled on 28 September 1990 that the Decree-Law on Amnesty (No. 2191) was constitutional; the Council has noted with great concern that that decision has the effect of closing or, as the case might be, preventing any criminal proceedings against "persons who, as author, accomplice or receiver, have taken part in criminal acts such as the forced disappearance of persons and the use of torture throughout the state of siege, that is, between 11 September 1973 and 10 March 1978", */ and of absolving them of any responsibility even before the examination of existing evidence, thus weakening respect for the rule of law.

12. The Council has firmly reiterated that, regardless of that decision and its effects, it is the legitimate right of the relatives of victims to know what has become of the "disappeared" persons, to recover their remains in the event of death and to obtain reparation, including the payment of adequate material compensation. It has hoped that the fate which had befallen Deputy Carlos Lorca Tobar would be quickly determined and has requested the Committee on the Human Rights of Parliamentarians to continue studying the case and to report to it at its one hundred and forty-eighth session (29 April - 4 May 1991).

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*/ Article one of the operative part of the decree.

(b) Five cases in Colombia

13. Two members of the Senate, Mr. Pedro Nel Jiménez Obando and Mr. Pedro Luis Valencia, were assassinated on 1 September 1966 and 14 August 1987, respectively; two members of the House of Representatives, Mr. Leonardo Posada Pedraza and Mr. Octavio Vargas Cuellar, were assassinated on 30 August and 15 December 1986, respectively; and lastly, an elected member of the Senate and a candidate for the office of President of the Republic, Mr. Bernardo Jaramillo Ossa, was assassinated on 22 March 1990. All were members of the Patriotic Union Party. Some 15 other members of the Colombian National Congress, who belonged to this party or to other formations, have sadly been murdered in recent years, and a great many parliamentarians feel threatened, but in the particular case of the five parliamentarians, the Committee was seized of a complaint that they had been victims of extrajudicial executions perpetrated by groups which might be operating on the authority or with the complicity of certain sectors of the Colombian Armed Forces.

14. At its session in October 1990, the Inter-Parliamentary Council deeply deplored the fact that, after months and in some instances years, the investigations had not been successful in any of the five assassinations (as in that of the 15 other murdered parliamentarians), despite the existence of testimonies and material evidence. It deplored those horrifying assassinations and those that are continuing to take place, which profoundly affect the Colombian National Congress and the entire international parliamentary community, and whose repetition with total impunity is a serious threat both to parliamentarians and to those whom they represent. It recommended urgently to the President of the Colombian Republic and his Government that they apply measures to rectify the situation in order that parliamentary democracy might so function as to protect and enhance the rights of citizens. It invited the Colombian judiciary to do everything in its power to establish responsibilities and punish the culprits. It also invited the National Congress of Colombia to use all its influence to this end by such means as it might deem appropriate. The member Parliaments of the Union were invited to enter into contact with the Colombian authorities. A new report would be made to the Council in May 1991.

(c) Two cases in Guinea-Bissau

15. Two members of the People's National Assembly, Mr. Lamine Cisse and Mr. Buota Nam Batcha, were both found guilty of crimes against State security. It would appear that they were stripped of their parliamentary mandates even before they were tried and found guilty, a procedure which is contrary to the rules of law. Following a trial before the High Military Court which reportedly did not fully meet international standards of a fair trial, they were sentenced to death and to 15 years' imprisonment, respectively. After commutation of the death sentence, both were transferred to a rehabilitation centre located on an island of the Bijagós Archipelago where they were obliged to perform "productive social work" to serve their 15-year prison sentences. In September 1989, the President of the People's National Assembly of Guinea-Bissau affirmed that the two former parliamentarians had been granted amnesty; he specified that they were living in the country with their families and leading normal lives, and said that they were in good health. However, an independent and reliable source has stated that Mr. Buota Nam Batcha died in prison in July 1986 of a serious

illness following inadequate medical care, and that Mr. Lamine Cisse's freedom continued to be restricted. In order to shed light on this contradiction, the Council has hoped that an on-site mission could be carried out, but this has not yet been possible. A report will be made to the Council in May 1991.

(d) One case in Honduras

16. Mr. Miguel Angel Pavón Salazar, a member of the National Congress and an active member of the Honduran Committee for the Defence of Human Rights (CODEH), was assassinated on 14 January 1988. He was killed shortly after having given evidence before the Inter-American Court of Human Rights in a case concerning four disappearances in Honduras between 1981 and 1984, and it is alleged that he was the victim of an extrajudicial execution perpetrated by members of the Intelligence Service of the Honduran Armed Forces.

17. Despite the asserted concern of the Honduran authorities to shed all possible light on this case, after nearly three years, the investigations have not been successful although there exist testimonies and material evidence. The Inter-Parliamentary Council has therefore urgently invited the executive and the judiciary in Honduras to do everything possible to shed full light on the murder of Deputy Pavón Salazar as soon as possible, establish responsibilities and punish the culprits. It has also invited the National Congress of Honduras (which is a member of the Union) to use all its influence to this end by such means as it may deem appropriate and has invited the Union's member Parliaments as a whole to enter into contact with the Honduran authorities in this connection. A new report will be presented to the Council in May 1991.

(e) Twelve cases in Sudan

18. Mr. Sadiq al-Mahdi (Umma Party, former Prime Minister) and Mr. Mohamed Ibrahim Nougoud (Secretary-General of the Sudanese Communist Party, now dissolved), were arrested on 30 June 1989 and were released on 10 January and 10 February 1990, respectively. However, both were immediately placed under house arrest in very strict conditions. Their present state of health is said to be very worrying. The Inter-Parliamentary Council has declared itself seriously concerned about all the information available to it regarding the situation of Mr. al-Mahdi and Mr. Nougoud, considering that it tends to suggest that these two figures are victims of political persecution. It has requested that all necessary medical care might be provided for them urgently and has invited the Sudanese authorities to lift the ministerial measures restricting their freedom, drawing their attention once more to the principle enshrined in the international human rights instruments to which Sudan is a party, namely, that any person arrested must be either formally charged and tried in a reasonable lapse of time, with guarantees for a fair trial, or be released forthwith. This appeal does not seem to have been heard.

19. Al-Hadj Abdalla Abdelrahman Nagdalla (Umma Party, former Minister of Religious Affairs) was arrested on 30 June 1989, and Mr. Bashir Omar Fadlalla (Umma Party, former Minister of Finance, former Minister of Information and former Minister of Energy and Mining) was arrested on 30 June 1989, then released and rearrested on 10 June 1990. They are still in detention at Kober Prison, Khartoum, and are undergoing interrogations. The Council has drawn the attention of the Sudanese authorities to the provisions of articles 9 and 10 of the International Covenant on Civil and Political Rights and to

those of article 6 of the African Charter on Human and Peoples' Rights (two international juridical instruments to which Sudan is a party).

20. The Council is also concerned about Mr. Osmane Omar Al-Sharif (Democratic Unionist Party, former Minister of Justice and former Public Prosecutor) and Mr. Ismail Abakar (Umma Party, former Minister for Housing and Cattle Rearing), who were tried on charges of corruption and sentenced to heavy prison terms by a martial-law court: it has been alleged that not all guarantees for a fair trial were given and fears have been voiced concerning their state of health.

21. Another former parliamentarian, Mr. Mohamed Tahir Gailani, was released on bail after a prolonged detention on 19 April 1990 and tried on charges of corruption. The Council has invited Sudan to ensure that the guarantees for a fair trial as set out in article 14 of the International Covenant on Civil and Political Rights and article 7 of the African Charter on Human and Peoples' Rights are respected, and has expressed the hope that the Committee on the Human Rights of Parliamentarians might follow developments of his trial.

22. With regard to parliamentarians on trial, it may be noted that the Inter-Parliamentary Union does not in any way question the fact that parliamentarians or former parliamentarians may be subjected to judicial proceedings, but is concerned that such proceedings comply with principles of equity.

23. For all of the above-mentioned cases, the Council has invited the Union's member Parliaments to enter into contact with the Sudanese authorities and to envisage on-site visits. A new report will be made to the Committee in May 1991.

24. Lastly, the Council has closed the files concerning Mr. Mohamed Othman Al-Mirghani (Head of the Democratic Unionist Party, now dissolved), Omar Nour Al-Dayem (former Minister of Finance and Economic Planning), Yhanis Yor Akol (Southern African Congress, also dissolved, former spokesman of the Union of Southern African Parties), Farouk Ahmad Adam (Democratic Unionist Party), and Mr. Mansour Yousif Elagab, who were unconditionally released following several months of detention without charge or trial at Kober Prison, Khartoum.

(f) One case in Turkey

25. For several years, the Council has been examining cases of former parliamentarians on trial for activities carried out in the framework of the Turkish Peace Committee, an organization which enjoyed legal existence prior to the unconstitutional dissolution of the Turkish Parliament on 12 September 1980 (this body was re-established in 1983 and is a member of the Union). It is continuing to study the case of Mr. Erol Saracoglu who might be obliged to serve a prison term if the sentence handed down against him in April 1987 is upheld by the Military Court of Appeals. The Council has noted that the judicial proceedings are based on a collective rather than an individual concept of criminal responsibility and on a posteriori legal nature of acts and opinions which did not give rise to proceedings prior to the dissolution of the Turkish Peace Committee. A new report will be made to the Council in May 1991.